

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**LPA No. 1965 of 2016 (O&M)
Date of decision: 30.01.2019**

Mohinder Singh

.....Appellant

Vs.

The Presiding Officer, Labour Court, Ambala and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. J.S. Cooner, Advocate for the appellant.

Ms. Mamta Singla Talwar, DAG, Haryana.

Harnaresh Singh Gill,J.

1. Appellant-Mohinder Singh has filed the instant Letters Patent Appeal under Clause X of the Letter Patent against the judgment dated 17.08.2016 passed by learned Single Judge.

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. Appellant-Mohinder Singh joined service with respondent No.2-District Forest Officer, Kaithal as a Beldar-cum-Mali in the year 2003. He continued to work as such till 01.01.2014 when his services were terminated in violation of provisions of the Industrial Disputes Act, 1947 (in short, "the Act"). The appellant served a demand notice dated Nil, Annexure P.2 praying for reinstatement in service with continuity and full back wages. On failure of conciliation proceedings before Labour-cum-Conciliation Officer, the dispute reached before the Labour Court. The respondent management

filed written statement dated nil, Annexure P.3, before the Labour Court. As per stand of the respondent management, there was no relationship of employer and employee between the management and the appellant. During the period from 2002 to 16.06.2005, the contractors were engaged and the payment was made to them. Further, with effect from 16.06.2005 onwards, the respondents had adopted a contract system and, thus, no direct labour/workmen was engaged. The appellant filed replication dated 14.09.2015, Annexure P.4. The appellant appeared as WW3 and stated that he worked from the year 2003 to 01.01.2014 and, thus, completed more than 240 days in the last preceding twelve calendar months. He also examined Sunil, Forest Guard as WW1 and Baljit Singh WW2 in support of his claim. The respondent examined Rajiv Kamboj, Range Forest Officer as MW.1. Vide award dated 26.04.2016, Annexure P.1, the Labour Court dismissed the claim of the appellant. According to the appellant, his services had been illegally and arbitrarily terminated on 01.01.2014 without any notice or wages in lieu thereof and without payment of any retrenchment compensation. Aggrieved by the award, the appellant filed CWP No. 16642 of 2016 in this Court. Vide order dated 17.08.2016, learned Single Judge dismissed the writ petition holding that very vague statement had been made by the appellant that he was appointed in the year 2003 and that his services had been terminated in the year 2014. Further, it was observed by the learned Single Judge that the petitioner was not aware on which date he was appointed on adhoc basis to the post of Beldar-cum-Mali. Hence, the instant appeal before this Court.

3. We have heard learned counsel for the parties.

4. Before adjudicating the controversy involved in the present appeal, it would be advantageous to reproduce the relevant statutory provisions i.e. Section 25B(2) and Section 25F of the Act, which read thus:-

“25B. Definition of continuous service- For the purposes of this chapter –

(1)xxxxxxxxxx

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.”

“25F. Conditions precedent to retrenchment of workmen.- No

workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

5. A plain reading of Section 25B(2) of the Act shows that where a workman is not in continuous service within the meaning of clause(1) of Section 25B of the Act for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year, if the workman during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. Section 25F of the Act provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until one month's notice in writing has been given to him or retrenchment compensation has been given to him.

6. In the present case, the onus was on the appellant to establish that he was in continuous service of the employer for more than 240 days in one calendar year. No document had been placed on record by the appellant in this regard. The appellant had failed to show any relationship of employer and employee thus, it was rightly concluded by the Labour Court that retrenchment of appellant was in accordance with the provisions of the Act. Learned Single Judge after examining the matter recorded that no material had been placed on

record to demonstrate that the appellant had worked for 240 days. Further, it was recorded that very vague statement was made that the appellant was appointed in the year 2003. Infact, no document had been brought on record by the appellant to prove that he actually worked for 240 days in one calendar year preceding the date of termination of his services on 1.1.2014. The relevant findings recorded by the learned Single Judge read thus:-

“Except affidavit, no material has been placed on record by the petitioner to demonstrate that he has worked for 240 days. Perusal of the award, it is crystal clear that the respondents have adopted contract policy system while replacing muster roll system from 2003 which is evident from Exhibit M.4 dated 27.10.2004 of the Principal Chief Conservator of Forests, Haryana. The petitioner is not aware on which date he was appointed on ad hoc basis to the post of Mali-cum-Beldar. Very vague statement has been made that he was appointed in the year 2003 and his services have been terminated in the year 2014. Thus, there is no error in award dated 26.4.2016 so as to interfere.

Petition stands dismissed."

Learned counsel for the appellant has not been able to point out any error or illegality in the findings recorded by the learned Single Judge, warranting interference by this Court.

7. Adverting to the judgments relied upon by the learned counsel for the appellant, it may be noticed that in ***Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda***, 2010(1) SCC 47, it was held by the Apex Court that initial burden is on the workman to prove that he completed 240 days of service. It shifts to the employer

when the workmen deposes in support of his claim. However, when the

department fails to discharge the burden of proving that the workman did not work for 240 days, the termination is not proper. In *Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation*, 1986 AIR (SC) 458, it was held by the Apex Court that Sundays and other paid holidays can also be taken into account for reckoning total number of working days of continuous service. In *Incharge Govt. Hide Playing Centre and another vs. Rama Ram and another*, (2003) 9 SCC 163, the workman worked for more than 240 days. Termination of his services was without following the procedure under Section 25F of the Act and the principle of ‘last come first go’. The Apex Court in such circumstances held the termination to be illegal.

8. The propositions of law enunciated in the above-mentioned decisions are unexceptionable. However, the factual matrix in the present case being different, the appellant cannot derive any advantage therefrom. Herein, no document had been placed on record by the appellant to prove that he actually worked for 240 days in one calendar year. The relationship between the management and the appellant was also not proved.

9. In view of the above, we do not find any ground to interfere with the judgment passed by the learned Single Judge. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

January 30, 2019
‘gs’

(Harnaresh Singh Gill)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes